

## Remarks

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

### ***Double Patenting***

In the Office Action, claims 1-5, 9-12, 32-35, 37, 38 and 40-45 were rejected as claiming the same invention as claims 1-5, 8-11, 21-24, 26, 27, 29-33 and 35 of US 7,799,663. This rejection should be withdrawn because the noted claims of the present application do not claim the same invention as the claims of the patent. It appears the Examiner has examined an earlier set of claims rather than the claims presented in the Corrected Preliminary Amendment filed on March 18, 2010.

Pending claim 1 reads as follows:

1. (original) A method of fabricating a metamaterial comprising:
  - providing a sample of engineered microstructured material comprising one or more voids and configured to transmit electromagnetic radiation;
  - providing a high pressure fluid comprising at least one functional material carried in at least one carrier fluid;
  - passing the high pressure fluid through the one or more voids; and
  - causing the functional material to integrate into the engineered microstructured material to form the metamaterial.

Claim 1 of the '663 patent reads as follows:

1. A method of fabricating a metamaterial comprising:
  - providing a sample of elongate engineered microstructured material comprising one or more elongate voids running substantially the length of the sample, the sample configured to transmit electromagnetic radiation;
  - providing a high pressure fluid comprising at least one semiconductor carried in at least one carrier fluid;
  - passing the high pressure fluid through the one or more voids; and
  - causing the semiconductor to deposit onto one or more surfaces of the one or more voids to form the metamaterial.

A comparison of these claims will reveal that the same invention is not being claimed.

### ***Claim Rejections - 35 USC § 112***

Claims 1-7, 9-35 and 37-54 have been rejected as being indefinite. The allegedly offending terms ("elongate" and "substantially the length of the sample") are not found in claim 1 (again the wrong set of claims appears to have been examined). These terms are found in claim 6 and perhaps other claims as well. The skilled person would have little difficulty understanding the scope of these terms in light of the specification. They are to be given their ordinary meaning consistent with the specification. Thus, it is submitted these terms do not cause any indefiniteness.

The absence in this reply of any comments on any other contentions set forth in the Office Action should not be construed to be an acquiescence therein. Rather, no comment is needed since the rejections should be withdrawn for at least the foregoing reasons.

### ***Conclusion***

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

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